108TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 108–316

BAIL BOND FAIRNESS ACT OF 2003

OCTOBER 15, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 2134]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2134) to amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bail Bond Fairness Act of 2003".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Historically, the sole purpose of bail in the United States was to ensure the defendant's physical presence before a court. The bail bond would be declared forfeited only when the defendant actually failed to appear as ordered. Violations of other, collateral conditions of release might cause release to be revoked, but would not cause the bond to be forfeited. This historical basis of bail bonds best served the interests of the Federal criminal justice system.

(2) Currently, however, Federal judges have merged the purposes of bail and other conditions of release. These judges now order bonds forfeited in cases in which the defendant actually appears as ordered but he fails to comply with some collateral condition of release. The judges rely on Federal Rule of Criminal Procedure 46(f) as authority to do so.

(3) Federal Rule of Criminal Procedure 46(e) has withstood repeated court challenges. In cases such as United States v. Vaccaro, 51 F.3d 189 (9th Cir. 1995), the rule has been held to authorize Federal courts specifically to order bonds forfeited for violation of collateral conditions of release and not simply for failure to appear. Moreover, the Federal courts have continued to uphold and expand the rule because they find no evidence of congressional intent to the contrary, specifically finding that the provisions of the Bail Bond Act of 1984 were not intended to supersede the rule.

(4) As a result, the underwriting of bonds for Federal defendants has become virtually impossible. Where once the bail agent was simply ensuring the defendant's physical presence, the bail agent now must guarantee the defendant's general good behavior. Insofar as the risk for the bail agent has greatly increased, the industry has been forced to adhere to strict underwriting guidelines, in most cases requiring full collateral. Consequently, the Federal criminal justice system has been deprived of any meaningful bail bond option.

(b) PURPOSES.—The purposes of this Act are—

(1) to restore bail bonds to their historical origin as a means solely to ensure the defendant's physical presence before a court; and

(2) to grant judges the authority to declare bail bonds forfeited only where the defendant actually fails to appear physically before a court as ordered and not where the defendant violates some other collateral condition of release.

SEC. 3. FAIRNESS IN BAIL BOND FORFEITURE.

(a)(1) Section 3146(d) of title 18, United States Code, is amended by inserting at the end "The judicial officer may not declare forfeited a bail bond for violation of a release condition set forth in clauses (i)–(xi), (xiii), or (xiv) of section 3142(c)(1)(B).".

(2) Section 3148(a) of title 18, United States Code, is amended by inserting at the end "Forfeiture of a bail bond executed under clause (xii) of section 3142(c)(1)(B) is not an available sanction under this section and such forfeiture may be declared only pursuant to section 3146.".

(b) Rule 46(f)(1) of the Federal Rules of Criminal Procedure is amended by striking "a condition of the bond is breached" and inserting "the defendant fails to appear physically before the court".

PURPOSE AND SUMMARY

H.R. 2134, the "Bail Bond Fairness Act of 2003," limits the circumstances in which bail can be forfeited. Bail set by a judge in federal court typically includes conditions that require a defendant to make all court appearances and meet other conditions, including a requirement that the defendant "break no laws."

This bill was drafted in response to a 1995 decision by the Ninth Circuit Court of Appeals. The decision would allow federal judges to forfeit bail bonds in cases in which the defendant fails to meet any of the court's bail conditions. The bill prohibits forfeiture except when the defendant fails to appear in court as ordered. In other words, it makes bail forfeiture "appearance-related" rather than "performance-related."

BACKGROUND AND NEED FOR THE LEGISLATION

A 1995 decision of the Ninth Circuit Court of Appeals, *U.S.* v. *Vaccaro,* 51 F.3d 189 (9th Cir. 1195), held that a judge may require forfeiture of the bail bond if the defendant fails to meet any of the conditions of his bond. Bail agents contend that they have not provided bond service in federal court because this decision makes it too risky. They further argue that, as a result, the federal courts do not have a meaningful bond option because bail agents cannot offer bail.

The bondsmen argue that this results in further federal expense investigating and tracking down fugitives through the U.S. Marshals. The bondsmen are frustrated with the Judicial Conference ("the Conference") because it was asked to address this issue several years ago, but according to the bondsmen, the Conference has not taken any action to change the situation.

The Judicial Conference has indicated that it considered this issue recently, and believes this legislation would unnecessarily limit the ability of federal judges to set appropriate conditions of release. The Conference maintains that forfeiture of bond for violation of a condition while on release—as opposed to not appearing as ordered is rarely ordered by courts. However, judges need the authority to do so in appropriate cases. This gives defendants additional incentives to comply with the conditions of bond.

Although there is no evidence that forfeiture in such cases is widespread, bondsmen argue that they do not offer bonds in the federal system because of the possibility that a court might forfeit the bond for a condition violation that the bondsmen cannot guarantee as easily as appearance. The Judicial Conference contends that this is inaccurate arguing that its statistics show that fiscal year 2001, federal pretrial services closed 38,050 cases involving criminal defendants who had been released into the community. Of those, only 878, or 2.3 percent, failed to appear in court. In FY 2000, 2.4 percent failed to appear; in FY 1999, 2.5 percent failed to appear in court.

The Department of Justice (DOJ) opposes this legislation because it contends that H.R. 2134 would eliminate the power of federal courts to forfeit bail, including a bail bond, where a defendant failed to satisfy a condition of release, other than by failing to appear before the court. DOJ argues this would seriously limit the ability of federal courts to enforce important conditions of pretrial release. As a result, the bill would either endanger public safety unnecessarily or increase the use of pretrial detention of defendants, or both.

HEARINGS

No hearings were held on H.R. 2134. A hearing was held on this issue at the end on the 107th Congress on October 8, 2002, by the Subcommittee on Crime, Terrorism, and Homeland Security.

COMMITTEE CONSIDERATION

On September 10, 2003, the Committee met in open session and ordered favorably reported the bill H.R. 2134 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 2134.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2134, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

OCTOBER 14, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2134, the Bail Bond Fairness Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2134—Bail Bond Fairness Act of 2003

H.R. 2134 would prohibit federal judges from requiring the forfeiture of bail bonds for any reason other than failure to appear before the court. Under current law, some judges require forfeiture when the defendant appears before the court but has violated a condition of release. (Such violations could include drug use or contacting the victim while released.)

Under current law, the Department of Justice (DOJ) collects about $5 million each year from bail bond forfeitures. Because H.R. 2134 would limit the scope of forfeitures, CBO estimates that the federal government would collect fewer forfeited bail bonds as a result of the legislation. Based on information from the Administrative Office of the United States Courts, CBO expects the number of forfeitures that would likely be affected by this legislation would

be small. Collections of such forfeitures are deposited into the Crime Victims Fund and spent in subsequent years. Therefore, CBO estimates that enacting H.R. 2134 would result in no significant net impact on the federal budget over the 2004–2013 period.

H.R. 2134 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Lanette J. Walker. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 2134 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

The title of the legislation is the "Bail Bond Fairness Act of 2003".

Section 2. Findings and purposes

Subsection 2(a) makes findings regarding bail bonds which can be summarized as follows:

(1) Historically, the sole purpose of bail in the United States was to ensure the defendant's appearance.

(2) Currently, federal judges order conditions of bail that include conditions other than appearance.

(3) Courts have interpreted the Federal Rules of Criminal Procedure to allow bonds to be forfeited if a defendant fails to comply with any condition of bond.

(4) Because of this interpretation, the underwriting of bonds for Federal defendants has become virtually impossible, because the risk for bail agents has greatly increased. In most cases, this means requiring full collateral.

(5) In the absence of a meaningful bail bond option, thousands of defendants in the federal system fail to show up for court appearances every year. At the Committee's markup, an amendment that deleted this fifth finding was offered and adopted.

Subsection 2(b) sets forth the purposes of the bill which can be summarized as follows:

(1) To restore bail bonds to their historical purpose—ensuring a defendant's appearance.

(2) To grant judges the authority to declare bail bonds forfeited only when the defendant actually fails to appear physically before a court as ordered and not when the defendant violates another condition of release.

Section 3. Fairness in bail bond forfeiture

Subsection 3(a) amends 18 U.S.C. §3146(d) to specify that a bail bond cannot be forfeited in any circumstances other than where a person has executed "a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required * * *" under 18 U.S.C. §3142(c)(1)(B).

Subsection 3(b) modifies 18 U.S.C. §3148(a) to clarify that forfeiture of a bail bond cannot occur for violations of a release condition.

Subsection3(c) amends Rule 46(f)(1) of Federal Rules of Criminal Procedure by only allowing forfeiture of bail for failing to appear-not for any other violation of a condition of bond.

AGENCY VIEWS

DEPARTMENT OF JUSTICE.
OFFICE OF LEGISLATION AFFAIRS,
Washington, DC, June 18, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on H.R. 2134, the "Bail Bond Fairness Act of 2003." The Justice Department opposes this bill.

Under the current federal pretrial services system and the bail options available under current law, courts have the means to allow defendants to remain in the community, to manage them, and to compel them to remain law abiding. Pretrial services officers enforce court ordered conditions of release and monitor defendants in the community; they ensure public safety and manage the risk posed by released defendants. This bill would undermine these efforts and pose new risks to the community. More specifically, H.R. 2134 would eliminate the power of Federal courts to forfeit bail, including a bail bond, where a defendant failed to satisfy a condition of release, other then by failing to appear before the court. This would seriously limit the ability of Federal courts to enforce important conditions of pretrial release. As a result, the bill would either endanger public safety unnecessarily or increase the use of pretrial detention of defendants, or both.

Section 2 of H.R. 2134 suggests that currently there is no meaningful bail bond option in the Federal courts and that thousands of defendants in the federal system fail to show up for court appearances every year. Both of these statements have no basis in fact. As Judge Edward Carnes of the 11th Circuit Court of Appeals and Chairman of the Judicial Conference's Advisory Committee on the Criminal Rules testified last year before the House Subcommittee on Crime, Terrorism, and Homeland Security, the federal criminal justice system has a long and enviable track record of appropriate pretrial release of defendants and of ensuring the appearance in court of these released defendants. In fiscal year 2001, federal pretrial services closed 38,050 cases involving criminal defendants who had been released into the community. Of those, only 878, or 2.3 percent, failed to appear. In FY 2000, 2.4 percent failed to appear; in FY 1999, 2.5 percent failed to appear.

Section 3142 of title 18 of the United States Code addresses the conditional pretrial release of defendants in the Federal criminal justice system. If a court determines that unsecured release will not reasonably assure a defendant's appearance or will endanger the safety of anyone in the community, the court is authorized to set conditions for release. These conditions can include: the posting of bail or a bail bond; restrictions on possession of weapons; use of alcohol or drugs; contact with victims or witnesses to the crime; or the keeping of a curfew. If these conditions are not met, the court can order the defendant detained and also can revoke and forfeit any bail or bail bond executed in the case. Rule 46 of the Federal Rules of Criminal Procedure sets out the procedures relating to the forfeiture of bail or bail bonds and to the settling aside or remission of any forfeiture.

We believe that putting the assets of the defendant or those of a friend or relative of the defendant at risk should the defendant violate a condition of release significantly increase the probability that the defendant will comply with such conditions. By eliminating that risk, H.R. 2134 would have two possible consequences. Either it would increase the risk of harm to the community—by increasing the risk that a released defendant would violate one or more conditions of release tied to public safety—or it would cause courts to refuse to release defendants who might otherwise be candidates for release (out of a reluctance to expose the court and innocent members of the public to the greater risk that the defendant would violate a significant condition of release). For example, good public policy dictates that a defendant charged with a crime of violence, if not detained, be released pending trial with every possible incentive not to possess a weapon and to stay away from the victim and witnesses of the charged crime. Under current law, a court can order the defendant's bail summarily forfeited if the defendant breaches either of these critical conditions of release. This is appropriate, because it fosters both public safety and appropriate use of pretrial detention. If H.R. 2134 were enacted, the court would be powerless to forfeit any bail, regardless of the seriousness of the defendant's breach of a non-appearance condition of release.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's views, there is no objection to submission of this report.

Sincerely,

WILLIAM E. MOSCHELLA,
Assistant Attorney General.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES,
Washington, DC, March 17, 2003.

Hon. HOWARD COBLE,
Chairman, Subcommittee on Crime, Terrorism and Homeland Security, Committee on the Judiciary, House of Representatives, Cannon House Office Building, Washington, DC.

DEAR CHAIRMAN COBLE: I am pleased to provide you with some additional bail bond statistics of the type requested during my tes-

timony on H.R. 2929, the "Bail Bond Fairness Act of 2001," before the Subcommittee on Crime, Terrorism, and Homeland Security on October 8, 2002. The bill would amend Federal Rule of Criminal Procedure 46(e) in order to remove a judge's power to forfeit a bail bond as a result of a defendant's violation of any release condition other than failing to appear.

Proponents of the bill contend that the bail bond industry is effectively prevented from doing business in federal courts because of the added risks associated with guaranteeing that a defendant abides by release conditions other than failing to appear. The statistics show conclusively, however, that corporate surety bonds are used in federal courts and that very few of them are forfeited as a result of a defendant violating any condition of release other than failing to appear. The statistics also show that the number of corporate surety bonds posted in federal court has increased consistently since 1995.

The data in the enclosed Table One is drawn from records maintained by the Administrative Office of the United States Courts. That table shows the total number of criminal defendants released on bond by a federal court during each of the ten fiscal years from 1993 through 2002, and it breaks those numbers down by type of bond, including recognizance, unsecured, cash, collateral, and corporate surety bonds. Mr. Richard Verrochi, representing the Professional Bail Agents of the United States, testified at the October 8 hearing that "since the *Vaccarro*[1] opinion, bail agents and corporate surety bail bond issuers have essentially been eliminated from the federal pretrial system, for obvious excessive risk reasons." His assertion is contradicted by the facts. Not only has the use of corporate surety bonds not decreased, as he indicated, but the number of corporate surety bonds posted in the federal courts has actually gone up significantly since the *Vacarro* decision was released in 1995. As Table One shows, the number of corporate surety bonds posted in federal courts has climbed from 812 in fiscal year 1995 to 2,275 in fiscal year 2002, an increase of 180 percent. That compares with an increase of only 33 percent in the total number of defendants released on bond over the same period. So, not only has the number of corporate surety bonds used in federal court not decreased since the year the *Vacarro* decision was issued, it has increased substantially and the rate at which the use of corporate surely bonds has increased has outstripped the growth in the total number of defendants released on bond.

The Administrative Office does not maintain statistics on the number of corporate surety bonds forfeited as result of a violation of a condition of release other than for failure to appear. At my request, however, the Administrative Office asked district court personnel to manually compile the number from the docket records in tend district courts that handle a substantial number of criminal cases, representing about a quarter of defendants released on bond nationally. The resulting statistics from those ten district courts, presented in Tables two, Three, and Four, show that there were few occasions on which a corporate surely bond was even subject to forfeiture because a defendant violated a condition of release

[1] *United States* v. *Vacarro*, 51 F.3d 189(9th Cir. 1995) (upholding a judge's authority to forfeit a bail bond as a result of a defendant's violation of a release condition that does not involve failing to appear).

other than for failing to appear. The number of occasions on which surety bond was actually forfeited as a result of a defendant violating a condition of release other than failing to appear was fewer still. For example, Table Two shows that during fiscal year 2002, in those ten districts total of 1,128 defendants were released on corporate surety bonds, 269 were found to have violated conditions of release other than appearance, and only 19 corporate surety bonds were forfeited for violations of release conditions other than appearance. In other words, the percentage of corporate surety bonds forfeited in those ten districts during fiscal year 2002 because of violation of a condition of release other than appearance is only about 2 percent of the total number of corporate surety bonds issued during that year in those districts.

The minuscule number of corporate bonds forfeited as a result of a defendant violating a condition of release other than for failing to appear belies the contention that corporate surety bonds posted in federal courts are subject to substantially enhanced risks of forfeiture because of conditions other than failure to appear. On the contrary, the statistics show that it is relatively rare for a federal court to forfeit a corporate surety bond as result of violation of a condition of release other than for failing to appear. Moreover, the posting of corporate surety bonds in federal courts, though relatively modest, is trending upward. I believe that these statistics support the comments I made during your subcommittee's hearing and the position of the Judicial Conference that federal courts should retain their authority to forfeit a bail bond as a result of a defendant's violation of a condition of release other than failing to appear.

We continue to encourage you and the subcommittee to oppose legislation amending Rule 46(e) and to support the conclusions and recommendations expressed in my statement on behalf of the Judicial Conference. Rule 436(e) should not be amended.

Sincerely yours,

ED CARNES,
U.S. Circuit Judge.

Enclosures.

Table 1
Types of Bonds Set for Defendants Released
For the Twelve Month Period Ending September 30th

Fiscal Year	Cases Closed*	Defendants Released**	Total Def. Released on Bond	Def. Released on Personal Recognizance Bond	Def. Released on Unsecured Bond	Defendants Released on Cash Bond	Defendants Released on Collateral Bond	Defendants Released on Corporate Surety Bond	Defendants Released with No Bond Set***
1993	50,284	29,694	19,584	6,964	6,509	2,895	2,478	1,149	10,110
1994	52,357	30,835	27,472	8,322	13,639	3,102	2,281	956	3,363
1995	52,108	29,522	27,403	8,793	13,894	2,893	2,172	812	2,119
1996	57,184	31,008	29,549	9,658	15,201	2,926	2,013	1,030	1,459
1997	63,599	33,909	32,197	9,947	16,817	3,161	2,098	1,391	1,712
1998	69,693	35,698	33,353	11,007	16,832	3,141	2,064	1,538	2,345
1999	75,348	37,850	34,999	11,254	18,148	3,311	2,053	1,715	2,851
2000	77,675	38,096	34,948	11,034	17,846	3,396	1,933	1,929	3,148
2001	79,129	38,588	34,879	10,879	17,708	3,195	1,989	1,985	3,709
2002	83,553	40,060	36,419	11,375	18,354	3,325	1,997	2,275	3,641

* Includes cases dismissed

** Includes defendants released at any time before disposition; includes cases dismissed. A defendant may have more than one type of release before disposition.

*** Includes defendants who may have had a bond set at a prior hearing, but was not released until a subsequent hearing; includes cases dismissed.

TABLE 2
Number of Corporate Surety Bonds Forfeited as a Result of a Violation of Condition of Release in Criminal Cases
(Other than Failure to Appear)
Fiscal Year 2002

District	Pretrial Services Cases Closed in Fiscal Year 2002*	Criminal Defendants Released in a Case Closed In Fiscal Year 2002**	Defendants Released on Bond	Defendants Released on Corporate Surety Bond***	Defendants Found to Have Violated Conditions on Corporate Surety Bond Other than Appearance	Corporate Surety Bonds Forfeited for Violation of Conditions Other than Appearance
California Southern	5,475	1,821	771	72	30	1
Florida Southern	2,297	974	932	210	44	2
Geogia Northern	984	476	472	178	34	0
Massachusetts	737	366	365	5	2	0
Missouri Eastern	849	438	419	34	11	0
New Mexico	2,738	851	849	121	47	7
New York Eastern	2,095	1,039	1,039	221	13	0
South Carolina	1,306	804	782	130	35	0
Texas Northern	1,661	741	575	41	12	0
Texas Western	5,092	2,278	2,172	116	41	9
Total	23,234	9,788	8,376	1,128	269	19

* Includes cases dismissed.
** Includes defendants released at any time before the case is closed, including cases that have been dismissed.
*** Available data does not reflect whether these bonds included only an appearance release condition or whether they also included release conditions other than appearance.

TABLE 3
Number of Corporate Surety Bonds Forfeited as a Result of a Violation of Condition of Release
(Other than Failure to Appear)
Fiscal Year 2001

District	Pretrial Services Cases Closed in Fiscal Year 2001*	Criminal Defendants Released in a Case Closed in Fiscal Year 2001**	Defendants Released on Bond	Defendants Released on Corporate Surety Bond***	Defendants Found to Have Violated Conditions on Corporate Surety Bond Other than Appearance	Corporate Surety Bonds Forfeited for Violation of Conditions Other than Appearance
California Southern	6,001	2,109	840	63	13	0
Florida Southern	2,179	1,030	990	183	41	0
Geogia Northern	1,014	495	488	162	31	0
Massachusetts	628	345	342	3	0	0
Missouri Eastern	647	323	314	20	5	0
New Mexico	2,111	725	723	107	32	10
New York Eastern	1,797	955	952	174	21	0
South Carolina	1,106	734	724	98	25	0
Texas Northern	1,704	802	650	66	21	1
Texas Western	5,105	2,234	2,173	79	33	3
Total	22,292	9,752	8,196	955	222	14

* Includes cases dismissed.
** Includes defendants released at any time before the case is closed, including cases that have been dismissed.
*** Available data does not reflect whether these bonds included only an appearance release condition or whether they also included release conditions other than appearance.

TABLE 4
Number of Corporate Surety Bonds Forfeited as a Result of a Violation of Condition of Release (Other than Failure to Appear)
Fiscal Year 2000

District	Pretrial Services Cases Closed in Fiscal Year 2000*	Criminal Defendants Released in a Case Closed in Fiscal Year 2000**	Defendants Released on Bond	Defendants Released on Corporate Surety Bond***	Defendants Found to Have Violated Conditions on Corporate Surety Bond Other than Appearance	Corporate Surety Bonds Forfeited for Violation of Conditions Other than Appearance
California Southern	4,787	1,591	772	58	11	0
Florida Southern	2,435	1,032	988	202	56	3
Geogia Northern	944	435	430	136	33	0
Massachusetts	722	398	398	7	0	0
Missouri Eastern	845	450	439	25	15	0
New Mexico	2,369	845	844	89	30	7
New York Eastern	1,951	1,031	1,025	161	20	0
South Carolina	1,129	739	718	134	30	0
Texas Northern	1,572	764	611	55	7	0
Texas Western	4,848	2,162	2,058	104	40	13
Total	21,602	9,447	8,283	971	242	23

* Includes cases dismissed.
** Includes defendants released at any time before the case is closed, including cases that have been dismissed.
*** Available data does not reflect whether these bonds included only an appearance release condition or whether they also included release conditions other than appearance.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * * * *

PART II—CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

* * * * * * *

§ 3146. Penalty for failure to appear

(a) * * *

* * * * * * *

(d) DECLARATION OF FORFEITURE.—If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) of this title or is subject to the release condition set forth in clause (xi) or (xii) of section 3142(c)(1)(B) of this title, the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States. *The judicial officer may not declare forfeited a bail bond for violation of a release condition set forth in clauses (i)–(xi), (xiii), or (xiv) of section 3142(c)(1)(B).*

* * * * * * *

§ 3148. Sanctions for violation of a release condition

(a) AVAILABLE SANCTIONS.—A person who has been released under section 3142 of this title, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court. *Forfeiture of a bail bond executed under clause (xii) of section 3142(c)(1)(B) is not an available sanction under this section and such forfeiture may be declared only pursuant to section 3146.*

* * * * * * *

RULE 46 OF THE RULES OF CRIMINAL PROCEDURE

Rule 46. Release from Custody; Supervising Detention

(a) * * *

* * * * * * *

(f) BAIL FORFEITURE.—

(1) DECLARATION.—The court must declare the bail forfeited if [a condition of the bond is breached] *the defendant fails to appear physically before the court*.

* * * * * * *

MARKUP TRANSCRIPT

Chairman SENSENBRENNER. Now, pursuant to notice, I call upon the bill H.R. 2134, the Bail Bond Fairness Act of 2003 for purposes of markup and moves its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[H.R. 2134 follows:]

I

108TH CONGRESS
1ST SESSION

H. R. 2134

To amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. KELLER (for himself, Mr. WEXLER, Mr. BAIRD, Mr. BASS, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. GINNY BROWN-WAITE of Florida, Mr. BURTON of Indiana, Mr. CARSON of Oklahoma, Mr. CONYERS, Mr. DAVIS of Florida, Mr. DEUTSCH, Mr. ENGLISH, Mr. FEENEY, Mr. HONDA, Mr. ISSA, Mr. MCCOTTER, Mr. MCDERMOTT, Mr. MEEHAN, Mr. MEEKS of New York, Mr. MICA, Mr. NADLER, Mr. PASCRELL, Mr. SCOTT of Virginia, Mr. THOMPSON of Mississippi, Mr. CHABOT, Ms. HART, Mr. GARRETT of New Jersey, Mr. OTTER, Mr. MURPHY, Mr. LAMPSON, and Mr. FOLEY) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bail Bond Fairness Act of 2003".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) Historically, the sole purpose of bail in the United States was to ensure the defendant's physical presence before a court. The bail bond would be declared forfeited only when the defendant actually failed to appear as ordered. Violations of other, collateral conditions of release might cause release to be revoked, but would not cause the bond to be forfeited. This historical basis of bail bonds best served the interests of the Federal criminal justice system.

(2) Currently, however, Federal judges have merged the purposes of bail and other conditions of release. These judges now order bonds forfeited in cases in which the defendant actually appears as ordered but he fails to comply with some collateral condition of release. The judges rely on Federal Rule of Criminal Procedure 46(e) as authority to do so.

(3) Federal Rule of Criminal Procedure 46(e) has withstood repeated court challenges. In cases such as United States v. Vaccaro, 51 F.3d 189 (9th Cir. 1995), the rule has been held to authorize Federal courts specifically to order bonds forfeited for violation of collateral conditions of release and not simply for failure to appear. Moreover, the Federal

courts have continued to uphold and expand the rule because they find no evidence of congressional intent to the contrary, specifically finding that the provisions of the Bail Bond Act of 1984 were not intended to supersede the rule.

(4) As a result, the underwriting of bonds for Federal defendants has become virtually impossible. Where once the bail agent was simply ensuring the defendant's physical presence, the bail agent now must guarantee the defendant's general good behavior. Insofar as the risk for the bail agent has greatly increased, the industry has been forced to adhere to strict underwriting guidelines, in most cases requiring full collateral. Consequently, the Federal criminal justice system has been deprived of any meaningful bail bond option.

(5) In the absence of a meaningful bail bond option, thousands of defendants in the Federal system fail to show up for court appearances every year. When this happens, the expense and effort by Federal law enforcement officers to investigate and apprehend defendants is wasted and the overall interests of justice are thwarted.

(b) PURPOSES.—The purposes of this Act are—

(1) to restore bail bonds to their historical origin as a means solely to ensure the defendant's physical presence before a court; and

(2) to grant judges the authority to declare bail bonds forfeited only where the defendant actually fails to appear physically before a court as ordered and not where the defendant violates some other collateral condition of release.

SEC. 3. FAIRNESS IN BAIL BOND FORFEITURE.

(a)(1) Section 3146(d) of title 18, United States Code, is amended by inserting at the end "The judicial officer may not declare forfeited a bail bond for violation of a release condition set forth in clauses (i)–(xi), (xiii), or (xiv) of section 3142(c)(1)(B)".

(2) Section 3148(a) of title 18, United States Code, is amended by inserting at the end "Forfeiture of a bail bond executed under clause (xii) of section 3142(c)(1)(B) is not an available sanction under this section and such forfeiture may be declared only pursuant to section 3146.".

(b) Rule 46(e)(1) of the Federal Rules of Criminal Procedure is amended by striking "there is a breach of condition of a bond" and inserting "the defendant fails to appear physically before the court".

Chairman SENSENBRENNER. And the Chair recognizes himself for 5 minutes to explain the bill.

A cornerstone of our Nation's system of criminal justice is a presumption of innocence for individuals charged with a crime. Consequently, it is important to have a mechanism where defendants can be released from custody while awaiting trial. Judges have historically been given the discretion to allow a defendant to put up money as collateral for the guarantee that they appear in court while awaiting their trial. Judges weigh many factors when setting this rate, including the nature of the charge and whether or not the individual is a risk of flight. Because very few individuals have the liquid assets to post 100 percent of the cost of bail, the bail bond industry allows individuals to contract through a bail bond entity who assumes the risk that they will appear on their trial date.

Unfortunately, this balance has been upset by a 1995 decision in the Ninth Circuit, *U.S.* v. *Vacarro,* which held that a judge may require the forfeiture of a bail bond if a defendant fails to meet any of the conditions of his or her bond. Because of this interpretation by the Ninth Circuit, the underwriting of bonds for Federal defendants has become virtually impossible. The risk for bail agents has greatly increased. Bail bondsmen are not providing bond service in Federal court because of this decision. It is simply too risky.

This unnecessarily leaves the Federal courts without a meaningful bond option. H.R. 2134, the Bail Bond Fairness Act of 2003, would solve this problem by limiting the circumstances for which bail can be forfeited. Bail set by a judge in Federal court typically includes provisions to require a defendant to make all court appearances and meet other conditions, including a requirement that the defendant break no laws. This bill would prohibit Federal judges from forfeiting bail bond except in cases where the defendant actually fails to appear before a court as ordered. It would not permit forfeiture when the defendant violates some other condition of release. In other words, it makes bail appearance-related rather than performance-related.

The courts would still be able to set conditions of bond, but would be required to take some action other than forfeiting a bond, such as revoking the bond altogether and returning the defendant to jail. This is a common-sense bill, and I urge my colleagues to vote in favor of it, and recognize the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman, for scheduling the markup of the Bail Bond Fairness Act of 2003.

Mr. Chairman, a person is to be presumed innocent until proven guilty, and basic fairness indicates that he should be free pending trial so that he can be in a position to aid in his or her own defense, absent a finding that the person poses a risk to society or poses a significant risk of not appearing.

Now, as you've indicated, the traditional way of binding a person or guaranteeing appearance is the surety bond, which places—and by placing conditions on bail. Now, the bond, as you've indicated, is usually put up by a bail bondsman or family members putting up a home. Should the defendant not appear, the bond on the bail will be forfeited.

Under current rules, the court may also not only condition—forfeit the bond for failure to appear but also forfeit the bond for failure to comply with conditions. Bail bondsmen have not been—have

not wanted to issue bonds under that system for fear that they might get forfeited if the bailee fails to meet a condition other than fairness—other than failure to appear.

Now, the court's ability to forfeit a bond for a condition like that puts a chilling effect—has a chilling effect on the ability of a person to get a bond. And allowing the courts to impose the responsibility of family members for defendant's activity under threat of losing their home or a bail bondsman for forfeiture—for failure to comply with conditions is an invitation for problems.

Since this—since you can have a forfeiture for failure to appear, the court will have the defendant before him for other sanctions, like revoking the bail or any other conditions they might want to appear, fines or anything like that, contempt of court, with the person before him. The court doesn't need to revoke the bond to make sure that the person is there or to make sure the person is behaving.

Mr. Chairman, in order to make sure that these bonds can actually be available to people, I would hope that we would support the bill. I urge colleagues to vote in favor of the bill.

I yield——

Mr. CONYERS. Would the gentleman yield?

Mr. SCOTT [continuing]. To the gentleman from Michigan.

Mr. CONYERS. I thank the ranking member of the subcommittee. I want to commend him and the chairman of the committee for their very excellent explanations of why the Bail Bond Fairness Act is necessary and would add my comments, ask unanimous consent that they be recorded——

Chairman SENSENBRENNER. Without objection.

[The statement of Mr. Conyers follows:]

STATEMENT OF JOHN CONYERS, JR.

I am a strong supporter of the bill before us today, legislation aimed at restoring the use of bail bonds to their original purpose.

Historically, the sole purpose of bail was to ensure a defendant's physical presence in court. Today, however, this has changed. The issuance of bail bonds has taken on a new purpose. Federal judges now use bail to ensure a defendant's appearance in court and to guarantee compliance with the collateral conditions of his or her release. This change has placed an increased burden on bail bond agents, family members, and loved ones requiring them to not only ensure the defendant's presence in court but also requiring them to monitor the general conduct of defendants.

This new policy, in many instances, has encouraged judges to order the forfeiture of bonds in cases where the defendant actually appears in court, as ordered, but fails to comply with some other collateral condition of release.

The expanded use of bail has led to a breakdown in our federal criminal justice system. The risk to the bail agent has increased, and the industry has been forced to adhere to strict underwriting guidelines. As a result, there is no longer a meaningful bail bond option. There is also no incentive for people who have already had their bail bonds forfeited to appear before court, and so we have thousands of defendants failing to make their scheduled court appearances. This vastly increases the expenses and effort expended by Federal law enforcement officers. It also unfairly penalizes family members, in many instances, forcing them to lose their home when offered as a form of collateral.

The bill before us changes all of that; while at the same time, not facilitating any increase in the release of dangerous criminals. Contrary to the opinion of some, the bill does not change the traditional bail process and it does not change the judge's authority to grant or refuse bail. Under section 3142(b) of title 18 of the United States Code, judges would still have the authority to deny pre-trial release if he or she determined that releasing a defendant would "not reasonably assure the appearance of the person as required or would endanger the safety of any other person or the community."

In sum, a defendant who has not been convicted of a crime should be released to bail unless there is reason, independent of the charge, for the court to believe his or her release would jeopardize public safety or that the defendant is not likely to make scheduled appearances and abide by the conditions of his release. The bill before us would achieve this objective.

I strongly urge my colleagues to support this commonsense proposal.

Chairman SENSENBRENNER. And without objection, all members' opening statements will appear in the record at this point.

The gentleman from Virginia?

Mr. SCOTT. Mr. Chairman, I'd yield to the gentleman—if you're going to close off statements, I'd like to yield the balance of my time to the gentleman from Florida.

Chairman SENSENBRENNER. The gentleman from Florida is recognized for a minute and 45 seconds.

Mr. WEXLER. Thank you, Mr. Chairman. Excessive bail shall not be required. that's how the Eighth Amendment to the Constitution begins. Our Founding Fathers recognized the right of bail as so important that they included it in our Bill of Rights. Citizens accused of crimes must be able to effectively prepare their defense. They're innocent until proven guilty. Unless they are a threat to public safety, citizens should have access to reasonable bail so that they can go home and prepare their cases. There are the tenets of our system of justice.

However, because of a misguided court decision, bail can be put farther out of reach for many defendants. That's why this bill, the Bail Bond Fairness Act, is necessary. If judges are permitted after the Vaccaro decision to raise the bar and begin to mandate good behavior as a condition for keeping bail, then agents will be much less likely to provide citizens with bonds. And that means that ordinary Americans will effectively be denied their constitutional rights.

A family should not be forced to lose the very roof over their head in order to ensure a relative's good behavior. A family is staking their home on whether or not the relative shows up for court. Court decisions already have—courts already have supervision officers to ensure compliance with the terms of bail. Under this legislation, judges still retain the right to set bail. If someone is dangerous or a flight risk, a judge can and should deny bail. If a defendant doesn't show up for court, then bail is forfeited. Those are time-honored rules.

We cannot allow the availability of bail to be threatened simply because a small number of judges want to move beyond the scope of these traditions. That is why I ask the committee to pass H.R. 2134.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Are there amendments?

Mr. WEXLER. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 2134, offered by Mr. Wexler and Mr. Keller. Page 3, strike line 17 and all that follows through line 23.

Chairman SENSENBRENNER. Okay. The gentleman from Florida is recognized for 5 minutes.

[Amendment to H.R. 2134 of Mr. Wexler follows:]

AMENDMENT TO H.R. 2134 OFFERED BY MR. WEXLER

Page 3, strike line 17 and all that follows through line 23.

Mr. WEXLER. Thank you, Mr. Chairman. I am filing this amendment with Mr. Keller. Unfortunately, Mr. Keller is unable to be here as well. It simply removes redundant and unnecessary language from the bill that I think only simply serve to embarrass the Federal judiciary, and we prefer that it be removed.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. WEXLER. Yes.

Chairman SENSENBRENNER. I believe this is a constructive amendment and urge the committee to adopt it.

Mr. WEXLER. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. WEXLER. Yes.

Chairman SENSENBRENNER. The question is on the Keller—or, excuse me, the Wexler-Keller amendment. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it; the amendment offered by the gentleman from Florida is agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If there are no further amendments, a reporting quorum is present. The question is on the motion to report the bill H.R. 2134 favorably as amended.

Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the bill, as amended, is favorably reported.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today. Without objection, the chairman is authorized to move to go to conference, pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all members will be given two days, as provided by House rules, in which to submit additional dissenting, supplemental or minority views.

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